

*Final signed
copy*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

DATE:

SUBJECT: Request for Approval of and Signature on a CERCLA Removal Order for the Puerto Rico Battery Recycling a/k/a Arecibo Battery CERCLA Site, Arecibo, Puerto Rico

FROM: Virginia Capon, Acting Chief *VC* and Nicoletta DiForte *N DiForte*
New York/Caribbean Superfund Branch Superfund Enforcement Coordinator
Office of Regional Counsel Emergency and Remedial Response Division

TO: Walter E. Mugdan, Director
Emergency and Remedial Response Division

Enforcement Confidential

The purpose of this memorandum is to request your approval and signature on the attached Administrative Settlement Agreement and Order on Consent ("Agreement"), Index No. CERCLA-02-2011-2010, with The Battery Recycling Company, Inc. ("Respondent") pursuant to Sections 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9622, relating to the Puerto Rico Battery Recycling a/k/a Arecibo Battery CERCLA Site (the "Site") located in Arecibo, Puerto Rico.

Under the Agreement, Respondent will perform a removal action focused on: 1) immediately preventing lead contaminated dust at Respondent's battery processing facility from being transported to facility employees' vehicles and homes, 2) cleaning of employee vehicles and homes, and 3) removal of lead-contaminated soil from a cattle pasture area adjacent to Respondent's facility valued at approximately \$2 million. Respondent will also reimburse EPA for the costs of overseeing the work.

The Site includes Respondent's battery processing facility which is at RD No. 2, Km 72.2, Cambalache Ward ("Facility"), Facility employee vehicles and homes in the vicinity of the Facility that have been contaminated by lead dust from the Facility, and a parcel of cattle pasture land approximately 600 feet long by 50 feet wide, located adjacent to and immediately north of the Facility. Respondent has owned the Facility at the Site since July 1994 and has conducted secondary lead smelting and/or reclamation operations there since 2004. Operations at the Facility include breaking and sorting lead-acid batteries and refining the lead to be resold as lead blocks to battery manufacturers. Respondent's operations generate large quantities of battery acid and lead-contaminated waste, resulting in high levels of lead contamination at the Facility.

In April 2008 and July 2010, EPA conducted sampling events in a cattle pasture area at the Puerto Rico Battery Recycling a/k/a Arecibo Battery Superfund Site ("Site") in Arecibo, Puerto Rico. Analysis of the samples showed elevated levels of lead contamination in the soil in the southern portion of the cattle pasture along the fence line of the Facility.

In November 2010 and April and May 2011, a number of children of Facility employees were tested by the Centers for Disease Control and Prevention, and 20-40% of the samples from each clinic of the susceptible population (e.g., children below 7 years of age, as well as pregnant and lactating women) were found to have elevated levels of lead above 10 micrograms per deciliter ("ug/dl"), with a lead screening level in one five month old child testing greater than 65 ug/dl, for which confirmatory lead testing indicated a blood lead level of 32.9 ug/dl.

Sampling conducted by EPA's contractor of cars and homes of Facility employees indicated elevated levels of lead above 40 micrograms per square foot ("ug/ft²"), with 27 employee vehicles measuring above 100,000 ug/ft². The pathway of contamination is believed to be the transfer of lead contaminated dust from the Facility to the employees' cars and homes.

Under the terms of the Agreement, Respondent will establish, implement and maintain temporary engineering and administrative controls to limit the potential migration of lead-contaminated dust from the Facility on workers' clothes, shoes, persons, and personal vehicles. Respondent will design, install, and operate a temporary vehicle decontamination station and decontaminate all motor vehicles exiting facility process areas. Respondent will clean and remove lead-contaminated dust and contaminated personal property from the interiors of vehicles and homes of current and former Facility employees indentified by EPA and provide rental cars and temporary relocation as necessary during the cleaning of the vehicles and homes. Respondent will also excavate and remove the lead-contaminated soil in the portion of the cattle pasture closest to the Facility until the soil cleanup objective of 400 mg/kg for lead is achieved. Respondent will also characterize the nature and extent of lead contamination in soil outside the Facility fence line along the eastern, southern, and western Facility boundaries. In exchange for this work, Respondents will receive a covenant not to sue and contribution protection for EPA's oversight costs and the removal work under the Agreement.

For the reasons stated above, we recommend that you sign the attached Agreement.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF
PUERTO RICO BATTERY RECYCLING
a/k/a ARECIBO BATTERY CERCLA
SITE,

The Battery Recycling Company,
Inc.,

Respondent,

Proceeding under Sections 106(a)
and 122 of the Comprehensive
Environmental Response,
Compensation, and Liability Act
of 1980, as amended, 42 U.S.C.
§§ 9606(a) and 9622.

Index Number
CERCLA-02-2011-2010

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR A REMOVAL ACTION

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (the "Settlement Agreement") is entered into voluntarily by The Battery Recycling Company, Inc. ("Respondent") and the United States Environmental Protection Agency ("EPA") and requires Respondent to perform a removal action and pay certain response costs in connection with Puerto Rico Battery Recycling a/k/a Arecibo Battery CERCLA Site ("Site") located in the Municipality of Arecibo, Puerto Rico.

2. This Settlement Agreement is issued to Respondent by EPA pursuant to the authority vested in the President of the United States under Section 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9622(a), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Fed. Reg. 2926, January 29, 1987). This authority was further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-C and 14-14-D and redelegated within Region II to the Director of the Emergency and Remedial Response Division by Regional Order No. R-1200, dated November 23, 2004.

3. Respondent's participation in this Settlement Agreement shall neither constitute nor be construed as an admission of guilt or liability or an admission of the Findings of Fact and Conclusions of Law in Section IV or Determinations in Section V of this Settlement Agreement. To effectuate the mutual objectives of EPA and Respondent, Respondent agrees to comply with and be bound by the terms of this Settlement Agreement. Respondent agrees not to contest the authority or jurisdiction of the Director of the Emergency and Remedial Response Division or his delegate to issue this Settlement Agreement, and further agrees that Respondent will not contest the validity of this Settlement Agreement or its terms in any proceeding to enforce the terms of this Settlement Agreement.

II. PARTIES BOUND

4. This Settlement Agreement applies to and is binding upon EPA and Respondent and Respondent's successors and assigns. Any change in the ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter the responsibilities of Respondent under this Settlement Agreement.

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Settlement Agreement or in an attachment to this Settlement Agreement, the following definitions shall apply:

- a. "Day" means a calendar day unless otherwise expressly stated. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business on the next working day.
- b. "Effective Date" means the date specified in Paragraph 111.
- c. "Party" or "Parties" means EPA and/or Respondent.
- d. "Response Costs" means (a) all direct and indirect costs incurred by EPA in overseeing Respondent's implementation of the

Work (defined below) until the date of EPA's written notification pursuant to Paragraph 108 of this Settlement Agreement that the Work has been completed; (b) all direct and indirect costs incurred by EPA in connection with obtaining access for Respondent in accordance with Section XII, below; and (c) all other direct and indirect costs incurred by EPA in connection with the implementation of this Settlement Agreement.

e. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, Index Number CERCLA-02-2011-2010, and all appendices attached hereto. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

f. "Site" shall mean Puerto Rico Battery Recycling a/k/a Arecibo Battery CERCLA Site, which includes a parcel of cattle pasture land approximately 600 feet long by 50 feet wide, located adjacent to and immediately north of Respondent's battery processing facility at RD No. 2, Km 72.2, Cambalache Ward, Arecibo Puerto, Rico and all areas to which lead contamination from the facility has come to be located.

g. "Waste" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2), or (3) above.

h. "Work" means all work and other activities that Respondent is required to perform pursuant to this Settlement Agreement.

IV. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. The Site is located between the Río Grande de Arecibo system and the Caño Tiburones (Natural Reserve), some 1.5 miles to the south of the Atlantic shoreline. Respondent's lead-acid battery processing facility (hereinafter, "Facility," which means the battery processing facility owned and operated by Respondent and located at RD No. 2, Km 72.2, Cambalache Ward, Arecibo Puerto, Rico) occupies approximately 16 acres and is bounded by Rd. No. 2 to the west, cattle pasture land to the north, farm land to the south, and a swampy, wooded lot to the east. The Facility is bordered by agricultural/ drainage canals

and is within a FEMA-designated floodplain. See Site map attached hereto as Appendix A. Seven homes are located adjacent to the northwest corner of the cattle pasture land.

7. Respondent has owned the battery processing Facility at the Site since July 1994 and has conducted secondary lead smelting and/or reclamation operations there since 2004. Operations at the Facility include breaking and sorting lead-acid batteries and refining the lead to be resold as lead blocks to battery manufacturers. Respondent takes in approximately 600 tons per month of spent batteries and produces approximately 500 tons per month of lead product. During its operations, Respondent generates large quantities of battery acid and lead-contaminated waste. Respondent's Facility contains high levels of lead contamination.

8. During the course of Respondent's operation of its battery processing Facility, storm water runoff containing lead from the battery recycling operations has migrated to the adjacent cattle pasture land at the Site.

9. EPA through its contractor, Lockheed Martin, under the EPA Response Engineering and Analytical Contract ("REAC"), conducted a sampling event at the Site in April 2008 that included sampling along the fence line between the cattle pasture and Respondent's battery processing Facility.

10. Surficial soil samples were collected at a depth of 0-2 inches and analysis of the samples showed a maximum lead concentration up to 57,500 mg/kg in one sampling location in the cattle pasture. The sampling results indicated that contamination was located in the southern portion of the cattle pasture, which contains a ditch located along a former rail line that ran in an east-west direction, parallel to the fence line between the pasture and Respondent's battery processing Facility.

11. A second sampling event was conducted at the Site by REAC from July 19 to 23, 2010. Sixty-eight soil samples were collected in the cattle pasture at depths down to 2 feet in 6 inch intervals from 17 locations. Analytic results showed lead up to 4,700 mg/kg with average lead concentrations of 843 mg/kg. The highest concentration of lead is located in the ditch area of the Site at a depth of 0-6 inches. Lead concentrations at deeper levels taper off in the ditch area with the exception of

the 12-18 inch interval, where average lead concentrations are 680 mg/kg.

12. In November 2010 and April and May 2011, a number of children of employees at Respondent's Facility were tested by the Centers for Disease Control and Prevention, 20-40% of the sample from each clinic of the susceptible population (children below 7 years of age, pregnant, and lactating women) were found to have elevated levels of lead above 10 micrograms per deciliter ("ug/dl"), with a lead screening level of one five month old child testing greater than 65 ug/dl, for which confirmatory lead testing indicated a blood lead level of 32.9 ug/dl. Sampling conducted by EPA's contractor of cars and homes of Facility employees indicated elevated levels of lead above 40 micrograms per square foot ("ug/ft²"), with 27 employee vehicles measuring above 100,000 ug/ft². The pathway of contamination is believed to be the transfer of lead-contaminated dust in the employee boots and uniforms from the Facility to the employees' cars and homes.

13. Lead is a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

14. This Site presents a significant risk to human health and the environment because cattle or people may be exposed to hazardous substances, specifically lead, in the soil via dermal contact or ingestion.

15. Lead exposure may cause adverse health effects, particularly in young children. Lead is a cumulative poison where increasing amounts can build up in the body. Ingestion and inhalation of large amounts may cause seizures, coma and death. Long-term exposure can result in severe damage to the blood-forming organs, and the nervous, urinary and reproductive systems.

16. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

17. Respondent is a corporation organized in the Commonwealth of Puerto Rico ("Commonwealth") and is thus a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Respondent is a responsible party with respect to the Site within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

18. The presence of lead in on-Site soils and the migration via surface water runoff constitutes a "release," within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22). In addition, there is a threat of further releases of hazardous substances at and from the Site.

19. Respondent has been given the opportunity to discuss with EPA the basis for issuance of this Settlement Agreement and its terms.

V. DETERMINATIONS

20. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). These factors include, but are not limited to, the following conditions:

- a. Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants;
- b. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; and
- c. the unavailability of other appropriate federal or state response mechanisms to respond to the release.

21. EPA has determined that a removal action at this Site is necessary to address the release or threat of release of a hazardous substance, pollutant or contaminant at the Site.

22. The actions required by this Settlement Agreement are necessary to protect the public health or welfare or the environment, are in the public interest, and, if carried out in compliance with the terms of this Settlement Agreement, will be considered to be consistent with the National Contingency Plan ("NCP").

23. Based upon the Findings of Fact and Conclusions of Law set forth above, and the administrative record supporting this removal action, EPA has determined that the actual or threatened

release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and it is hereby agreed and ordered that Respondent shall undertake a removal action at the Site, as set forth in Section VII (Work To Be Performed), below.

VII. WORK TO BE PERFORMED

A. Designation of Contractor and Designated Project Coordinator

24. Within ten (10) working days after the effective date of this Settlement Agreement, Respondent shall select a coordinator, to be known as the Project Coordinator, and shall submit the name, address, qualifications, and telephone number of the Project Coordinator to EPA. The Project Coordinator shall be responsible on behalf of Respondent for oversight of the implementation of this Settlement Agreement. The Project Coordinator shall not be an attorney engaged in the practice of law. He or she shall have the technical expertise sufficient to adequately oversee all aspects of the Work contemplated by this Settlement Agreement. Respondent shall ensure that all Work requiring certification by a professional engineer licensed in the Commonwealth shall be reviewed and certified by such. The Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Settlement Agreement.

25. Selection of the Project Coordinator shall be subject to approval by EPA in writing. If EPA disapproves a proposed Project Coordinator, Respondent shall propose a different person and notify EPA of that person's name, address, telephone number and qualifications within five (5) working days following EPA's disapproval. Respondent may change the Project Coordinator provided that EPA has received written notice at least five (5) working days prior to the desired change. All changes of the Project Coordinator shall be subject to EPA approval.

26. EPA correspondence related to this Settlement Agreement will be sent to the Project Coordinator on behalf of Respondent. To the extent possible, the Project Coordinator shall be present on-Site or readily available for EPA to contact during all working days and be retained by Respondent at all times until EPA issues a notice of completion of the Work in accordance with

Paragraph 108. Notice by EPA in writing to the Project Coordinator shall be deemed notice to Respondent for all matters relating to the Work under this Settlement Agreement and shall be deemed effective upon receipt.

27. All activities required of Respondent under the terms of this Settlement Agreement shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by the Federal, Commonwealth, and/or local governments consistent with Section 121 of CERCLA, 42 U.S.C. § 9621, and all Work conducted pursuant to this Settlement Agreement shall be performed in accordance with prevailing professional standards.

28. Respondent shall retain at least one contractor to perform the Work. Respondent shall notify EPA of the name and qualifications of a proposed contractor within twenty (20) days of the effective date of this Settlement Agreement. Respondent shall also notify EPA of the name and qualifications of any other contractor or subcontractor proposed to perform Work under this Settlement Agreement at least ten (10) days prior to commencement of such Work.

29. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors proposed by Respondent to conduct the Work. If EPA disapproves in writing of any proposed contractors to conduct the Work, Respondent shall propose a different contractor within ten (10) days of receipt of EPA's disapproval.

30. Respondent shall provide a copy of this Settlement Agreement to each contractor and subcontractor approved and retained to perform the Work required by this Settlement Agreement. Respondent shall include in all contracts or subcontracts entered into for Work required under this Settlement Agreement provisions stating that such contractors or subcontractors, including their agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Settlement Agreement and all applicable laws and regulations. Respondent shall be responsible for ensuring that all contractors and subcontractors perform the Work contemplated herein in accordance with this Settlement Agreement.

B. Description of Work

31. Respondent shall perform, at a minimum, all actions necessary to implement the Work set forth in this paragraph. The actions to be implemented include, but may not be limited to, the following:

a. excavation of contaminated soil in the cattle pasture until the soil cleanup objective of 400 mg/kg for lead is achieved;

b. proper characterization, transportation and off-Site disposal of all contaminated soil;

c. appropriate post-excavation soil sampling and analysis in the excavation areas to ensure the contamination has been effectively removed;

d. appropriate backfilling of excavated areas and Site restoration;

e. characterization of the nature and extent of lead contamination in soil outside the Facility fence line along the eastern, southern, and western Facility boundaries;

f. establishing, implementing, and maintaining temporary engineering and administrative controls to limit the potential migration of lead-contaminated dust from the Facility on workers' clothes, shoes, person, and personal vehicles, the effectiveness of which shall be evaluated by periodic, random testing of workers vehicles;

g. designing, installing, and operating a temporary vehicle decontamination station and decontamination of all motor vehicles exiting Facility process areas;

h. cleaning and removing lead contaminated dust and contaminated personal property from the interiors of vehicles and homes of current and former Facility employees identified by EPA;

i. providing rental cars, temporary relocation as necessary during the cleaning of vehicles and homes, and replacement of contaminated personal property in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies

Act, 42 U.S.C. Section 4601, et seq.; 49 C.F.R. Part 24; and the *Superfund Response Actions Temporary Relocations Implementation Guidance*, OSWER Directive No. 9230.0-97, April 2002;

j. conducting post-cleaning sampling and analysis of cars and homes to confirm the effectiveness of the cleaning; and

k. such other investigations, studies, and response actions as Respondent may propose and EPA may approve in accordance with this Settlement Agreement.

After the effective date of this Settlement Agreement if EPA cleans any homes or cars Respondent shall reimburse EPA for its costs.

32. Within thirty (30) days of the effective date of this Settlement Agreement, Respondent shall submit to EPA for review and approval a detailed Site Operating Plan ("SOP") for the Work in accordance with this Settlement Agreement, CERCLA, the NCP, EPA's relevant guidance documents and other applicable Federal and Commonwealth laws and regulations. This SOP shall include the following:

- a. Site Work Plan;
- b. Transportation and Disposal Plan
- c. Site Health and Safety Plan; and
- d. Quality Assurance Project Plan ("QAPP"), which shall include a plan for sampling and analysis.

33. The Site Work Plan shall discuss the proper characterization, excavation, staging, handling, sampling and analysis of all materials containing hazardous substances, pollutants or contaminants at the Site, and at a minimum, address the following:

- a. Mobilization, including set-up of office, laboratory, and decontamination trailers and facilities as necessary to properly support field activities under this Settlement Agreement and establishment of work zones including, but not limited to a support zone, contamination reduction zone, and exclusion zone. Maps must be prepared to depict all work and safety

zones including staging and sampling areas, waste segregation areas, command posts and decontamination areas all located from fixed points and plotted to scale.

- b. Proposed Time Line for the completion of all on-Site activities and all other requirements of this Settlement Agreement. The schedule shall provide for completion of all field work no later than 90 days from the date of approval of the SOP.
- c. Procedures for excavating, handling and staging contaminated soil which prevent the release of hazardous substances to the environment including runoff control, proper water management and containment, emissions management and erosion control.
- d. A description of any potential dewatering activities, should it prove necessary. The description must include a description of how the water will be stored during the excavation activities as well as a description of the final disposition of the water.
- e. A plan for restoring all areas of the cattle pasture disturbed as part of the Work.
- f. A plan for limiting the off-site migration of lead contaminated dusts on workers' clothes, shoes, persons and personal vehicle.
- g. Procedures for decontaminating vehicles leaving Facility process areas.
- h. Procedures for removing lead contaminated dust and personal property from vehicles and homes.
- i. A plan for temporary relocation of residents during cleaning of homes and vehicles.
- j. A plan for providing Site security including, but not limited to, measures to be taken to keep unauthorized personnel from entering restricted work areas and the Site for the duration of the cleanup.

34. The Transportation and Disposal Plan shall outline procedures for the proper transporting and disposing of all hazardous substances, pollutants and contaminants, hazardous waste and any solid waste generated during the Work. The Plan will include the identification of the proposed disposal facilities for all waste streams and include waste profile information, facility acceptance documentation, and analytical characterization of each waste stream. In addition the Plan will include the following information where applicable, to be documented by the Respondent:

- a. the valid RCRA transporter and disposal identification numbers for each proposed transporter and disposal company;
- b. the most recent six-month State, Commonwealth, or EPA regulatory inspection results of each disposal company;
- c. documentation of the current permit status of proposed transporters and disposal facilities; and
- d. the date of the most recent State or EPA regulatory inspection of each proposed disposal company, and any special provisions or conditions attached to the RCRA disposal permits as a result of the most recent inspection.

Respondent shall provide all of the information required in a. - d. above to the EPA On-Scene Coordinator ("OSC") prior to shipping any hazardous waste off the Site. After permitted disposal facilities have been identified, all wastes shall be properly manifested and shipped off-Site via permitted transporters. All final signed manifests, bills of lading and certificates of destruction or disposal will be provided to the OSC upon receipt by Respondent.

35. The Site Health and Safety Plan shall ensure the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with the "EPA Standard Operating Safety Guide" (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. The plan shall also include contingency

planning. Respondent shall incorporate all changes to the plan required by EPA and shall implement the plan during the duration of the removal action. The Site Health and Safety Plan, at a minimum, shall address the following:

- a. Delineation of the work zones;
- b. Personnel monitoring requirements, paying particular attention to monitoring specific job functions in compliance with OSHA requirements;
- c. Personal protective equipment requirements and upgrade thresholds based on real-time air monitoring;
- d. Demonstration that all personnel, including subcontractor personnel, have current certifications as per applicable OSHA regulations;
- e. Decontamination procedures for personnel and equipment exiting any hot zone; and
- f. Compliance with OSHA requirements for Health and Safety Plans.

If performance of any subsequent phase of the work required by this Settlement Agreement requires alteration of the Health and Safety Plan, Respondent shall submit to EPA for review and approval proposed amendments to the Health and Safety Plan.

36. The QAPP shall contain the following:

- a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA policy and guidance regarding sampling, quality assurance, quality control, data validation, and chain of custody procedures. Respondent shall incorporate these procedures in accordance with the Uniform Federal Policy for Implementing Quality Systems ("UFP-QS"), EPA-505-F-03-001, March 2005; Uniform Federal Policy for Quality Assurance Project Plans ("UFP-QAPP"), Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005 or newer; and other guidance documents referenced in the aforementioned guidance documents. Subsequent amendments to the above, upon notification by EPA to

Respondent of such amendments, shall apply only to procedures conducted after such notification.

- b. If performance of any subsequent phase of the work required by this Settlement Agreement requires alteration of the QAPP, Respondent shall submit to EPA for review and approval proposed amendments to the QAPP.
- c. Respondent shall conduct the appropriate level of data verification/validation and provide the specified data deliverables as provided in the EPA-approved QAPP.
- d. The QAPP shall require that any laboratory utilized by Respondent is certified for the matrix/analyses which are to be conducted for any work performed pursuant to this Order, by one of the following accreditation/certification programs: USEPA Contract Laboratory Program ("CLP"), National Environmental Laboratory Accreditation Program ("NELAP"), American Association for Laboratory Accreditation ("A2LA"), or a certification issued by a program conducted by a state, and acceptable to EPA, for the analytic services to be provided. The QAPP shall require the Respondent to submit laboratory certificates from such accreditation programs that are valid at the time samples are analyzed. If a specific analytical service is unavailable from a certified laboratory, EPA may within its discretion, approve Respondent's utilization of a laboratory that is not certified. EPA approval shall be based on Respondent's submittal of a written request, submittal of the laboratory quality assurance plan, and the laboratory's demonstration of capability through the analysis of Performance Evaluation samples for the constituents of concern.
- e. In their contract(s) with laboratories utilized for the analyses of samples, Respondent shall require granting access to USEPA personnel and authorized representatives of the USEPA to the laboratories for the purpose of ensuring the accuracy of laboratory results related to the Site.

- f. For any analytical work performed under this Settlement Agreement, including but not limited to that performed in a fixed laboratory, in a mobile laboratory, or in on-site screening analyses, Respondent shall submit to EPA, within thirty (30) days after acceptance of the analytical results, a "Non-CLP Superfund Analytical Services Tracking System" form with respect to each laboratory utilized during a sampling event. Each such form shall be submitted to the EPA OSC, and a copy of the form and transmittal letter shall also be sent to:

Regional Sample Control Center Coordinator (RSCC)
USEPA, Division of Environmental Science &
Assessment
MS-215
2890 Woodbridge Avenue
Edison, New Jersey 08837.

37. The QAPP shall include detailed procedures, methods and sampling parameters to be implemented to sample and analyze the contaminants found in Site soils, dust, and other wastes that are required for off-Site transport and disposal, and to insure proper staging of containerized materials into compatible waste groups for disposal. The QAPP will also include detailed procedures, methods, and sampling parameters to be utilized for post-excavation sampling of soil and infiltrating groundwater, if any, in the areas of excavation to establish criteria for determining completion of the waste and contaminated soil removal. The QAPP will include detailed procedures, methods, and sampling parameters to be utilized for post-cleaning sampling of cars and homes to confirm the effectiveness of the cleaning. The QAPP will include maps depicting proposed sampling locations. Appropriate sampling and analysis methods (e.g., sample frequency, compositing techniques, etc.), as necessary shall be utilized for the proper disposal of contaminated soil and containers.

38. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing Work under this Settlement Agreement. Respondent shall notify EPA not less than five (5) working days in advance of any sample collection activity.

39. EPA either will approve the SOP, or will require modifications thereto pursuant to Section VIII (Plans and Reports Requiring EPA Approval), below. Upon its approval by EPA, the SOP shall be deemed to be incorporated into and an enforceable part of this Settlement Agreement.

40. Within five (5) working days after EPA's approval of the SOP, Respondent shall commence the Work described in the EPA-approved SOP. Respondent shall fully implement the EPA-approved SOP in accordance with the terms and schedule therein and in accordance with this Settlement Agreement. All Work requirements of this Settlement Agreement shall be completed within six (6) months of the effective date of this Settlement Agreement.

41. Respondent shall notify EPA of the names and addresses of all off-Site Waste treatment, storage, or disposal facilities selected by Respondent to receive Wastes from the Site. Respondent shall provide such notification to EPA for approval at least five (5) working days prior to off-Site shipment of such Wastes.

42. At the time of completion of all field activities required by this Settlement Agreement, demobilization shall include sampling if deemed necessary by EPA, and proper disposal or decontamination of protective clothing, remaining laboratory samples taken pursuant to this Settlement Agreement, and any equipment or structures constructed to facilitate the cleanup. Respondent shall insure that the Site is restored to its original condition.

43. Respondent shall conduct the Work required hereunder in accordance with CERCLA and the NCP, and in addition to guidance documents referenced above, the following guidance documents: *EPA Region 2's "Clean and Green Policy"* which may be found at <http://epa.gov/region2/superfund/greenremediation/policy.html>, and Guide to Management of Investigation-Derived Wastes (OSWER Publication 9345.3-03FS, January 1992), as they may be amended or modified by EPA.

C. On-Scene Coordinator, Other Personnel, and
Modifications to EPA-Approved SOP

44. All activities required of Respondent under the terms of this Settlement Agreement shall be performed only by qualified

persons possessing all necessary permits, licenses, and other authorizations required by the Federal government and the Commonwealth, and all work conducted pursuant to this Settlement Agreement shall be performed in accordance with prevailing professional standards.

45. The current EPA OSC for the Site is: Geoffrey Garrison, Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region 2, Centro Europa Building, 1492 Ponce Deleon Avenue, Suite 417, San Juan, Puerto Rico 00907-4127, office telephone number 787-977-5820. EPA will notify Respondent's Project Coordinator if EPA designates a different OSC for this Site.

46. EPA, including the OSC, or his authorized representative, will conduct oversight of the implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other response action undertaken by EPA or Respondent at the Site consistent with this Settlement Agreement. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

47. As appropriate during the course of implementation of the actions required of Respondent pursuant to this Settlement Agreement, Respondent or its consultants or contractors, acting through the Project Coordinator, may confer with EPA concerning the required actions. Based upon new circumstances or new information not in the possession of EPA on the effective date of this Settlement Agreement, the Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved SOP. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated into this Settlement Agreement and shall be implemented by Respondent.

VIII. PLANS AND REPORTS REQUIRING EPA APPROVAL

48. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement, Respondent shall have fourteen (14) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other

written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondent shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondent a written statement to that effect.

49. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement is disapproved by EPA, even after being resubmitted following Respondent's receipt of EPA's comments on the initial submittal, Respondent shall be deemed to be out of compliance with this Settlement Agreement. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondent to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs of doing so from Respondent. Respondent shall implement any such item(s) as amended or developed by EPA.

50. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Settlement Agreement. EPA may modify those documents and/or perform or require the performance of additional work unilaterally. EPA also may require Respondent to perform additional work unilaterally to accomplish the objectives set forth in this Settlement Agreement.

51. All plans, reports and other submittals required to be submitted to EPA pursuant to this Settlement Agreement, upon approval by EPA, shall be deemed to be incorporated into and an enforceable part of this Settlement Agreement.

IX. REPORTING AND NOTICE TO EPA

52. Commencing on the tenth day of the month after the Effective Date of this Settlement Agreement, unless there is field work at the Site, Respondent shall provide monthly progress reports. Whenever, during the implementation of this Settlement Agreement, Respondent are engaged in active field work, Respondent shall provide EPA with daily oral progress reports, as well as written progress reports every seven (7)

days. The first written progress report during active field work shall be submitted within seven (7) days of the commencement of field work. All progress reports shall fully describe all actions and activities undertaken pursuant to this Settlement Agreement. Such progress reports shall, among other things: (a) describe the actions taken toward achieving compliance with this Settlement Agreement during the previous week; (b) include all results of sampling and tests and all other data received by Respondent after the most recent progress report submitted to EPA; (c) describe all actions which are scheduled for the next week; (d) provide other information relating to the progress of Work as is customary in the industry; and (e) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays.

53. Respondent shall provide EPA with at least one (1) week advance notice of any change in the schedule.

54. The Final Report referred to in Paragraph 56, below, and other documents submitted by Respondent to EPA which purport to document Respondent's compliance with the terms of this Settlement Agreement shall be signed by a responsible official of Respondent or by the Project Coordinator designated pursuant to Paragraph 24. For purposes of this paragraph, a responsible official is an official who is in charge of a principal business function.

55. The SOP, the Final Report, and other documents required to be submitted to EPA under this Settlement Agreement shall be sent to the following addressees:

3 copies to:

U.S. Environmental Protection Agency, Region II
Centro Europa Building
1492 Ponce Deleon Avenue, Suite 417
San Juan, Puerto Rico 00907-4127
Attention: Geoffrey Garrison, Puerto Rico Battery
Recycling/Arecibo Battery CERCLA Site OSC

1 copy to:

New York/Caribbean Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, New York 10007-1866
Attention: Argie Cirillo, Esq., Puerto Rico Battery
Recycling/Arecibo Battery CERCLA Site

2 copies to:

Pedro Nieves, Chairman
Puerto Rico Environmental Quality Board
P.O. Box 11488
Santurce, PR 00910

56. Within thirty (30) days after completion of the work required by the SOP, Respondent shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Settlement Agreement. The Final Report shall include:

- a. A synopsis of all Work performed under this Settlement Agreement;
- b. A detailed description of all EPA-approved modifications to the SOP which occurred during Respondent' performance of the Work required under this Settlement Agreement;
- c. A listing of quantities and types of materials removed from the Site or handled on-Site;
- d. A discussion of removal and disposal options considered for those materials;
- e. A listing of the ultimate destination of those materials;
- f. A presentation of the analytical results of all sampling and analyses performed, including QAPP data and chain of custody records;
- g. Accompanying appendices containing all relevant documentation generated during the Work (e.g.

manifests, bills of lading, invoices, bills, contracts, certificates of destruction and permits;

- h. An accounting of expenses incurred by Respondent in performing the work; and
- i. The following certification signed by a person who supervised or directed the preparation of the Final Report:

"I certify that the information contained in and accompanying this document is true, accurate, and complete."

57. EPA either will approve the Final Report or will require modifications thereto pursuant to Paragraphs 48-51, above.

X. OVERSIGHT

58. During the implementation of the requirements of this Settlement Agreement, Respondent and its contractor(s) and subcontractors shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the Work being carried out or to be carried out by Respondent, including inspections at the Site and at laboratories where analytical work is being done hereunder.

59. Respondent and its employees, agents, contractor(s) and consultant(s) shall cooperate with EPA in its efforts to oversee Respondent's implementation of this Settlement Agreement.

XI. COMMUNITY RELATIONS

60. Respondent shall cooperate with EPA in providing information relating to the Work required hereunder to the public. As requested by EPA, Respondent shall participate in the preparation of all appropriate information disseminated to the public; participate in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site; and provide a suitable location for public meetings, as needed.

XII. ACCESS TO PROPERTY AND INFORMATION

61. EPA, the Puerto Rico Environmental Quality Board ("EQB"), and their designated representatives, including, but not limited to, employees, agents, contractor(s), and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Settlement Agreement. Respondent shall at all times permit EPA, EQB, and their designated representatives full access to and freedom of movement at the Site and any other premises where Work under this Settlement Agreement is to be performed for purposes of inspecting or observing Respondent's progress in implementing the requirements of this Settlement Agreement, verifying the information submitted to EPA by Respondent, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Settlement Agreement.

62. Where response action under this Settlement Agreement is to be performed in areas owned by or in the possession of someone other than Respondent, Respondent shall use best efforts to obtain access agreements from the present owners within twenty (20) days of the effective date of this Settlement Agreement for purposes of implementing the requirements of this Settlement Agreement. Such agreements shall provide access not only for Respondent, but also for EPA and its designated representatives or agents, as well as EQB and its designated representatives or agents. Such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. If such access agreements are not obtained by Respondent within the time period specified herein, Respondent shall immediately notify EPA of their failure to obtain access and shall include in that notification a summary of the steps Respondent have taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondent, may perform those response actions with EPA contractors at the property in question, or may terminate the Settlement Agreement if Respondent cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondent shall perform all other activities not requiring access to that property. Respondent shall integrate the results of any such tasks undertaken by EPA into their reports and deliverables.

63. Upon request, Respondent shall provide EPA with access to all records and documentation related to the conditions at the Site, hazardous substances found at or released from the Site, and the actions conducted pursuant to this Settlement Agreement except for those items, if any, subject to the attorney-client or attorney work product privileges. Nothing herein shall preclude Respondent from asserting a business confidentiality claim pursuant to 40 C.F.R. Part 2, Subpart B. All data, information, and records created, maintained, or received by Respondent or their contractor(s) or consultant(s) in connection with implementation of the Work under this Settlement Agreement, including, but not limited to, contractual documents, invoices, receipts, work orders, and disposal records shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this paragraph. EPA shall be permitted to copy all such documents. Respondent shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Respondent or its contractor(s), or on Respondent's behalf, in connection with the implementation of this Settlement Agreement.

64. Upon request by EPA, Respondent shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Settlement Agreement.

65. Notwithstanding any other provision of this Settlement Agreement, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. RECORD RETENTION, DOCUMENTATION, AVAILABILITY OF INFORMATION

66. Respondent shall preserve all documents and information relating to Work performed under this Settlement Agreement, or relating to Waste materials found on or released from the Site, for six (6) years after completion of the Work required by this Settlement Agreement. At the end of the six (6) year period, Respondent shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondent shall provide EPA with the originals or copies of such documents and information.

67. All documents submitted by Respondent to EPA in the course of implementing this Settlement Agreement shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all such documents to EQB, and EQB may make those documents available to the public unless Respondent complies with applicable Puerto Rico law and regulations regarding confidentiality. Respondent shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific, or engineering data relating to the Work performed hereunder.

XIV. OFF-SITE SHIPMENTS

68. All hazardous substances and pollutants or contaminants removed from the Site pursuant to this Settlement Agreement for off-Site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with (a) Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), (b) Section 300.440 of the NCP, (c) the Clean Air Act ("CAA"), 42 U.S.C. § 7401, et seq., (d) RCRA, (e) the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601, et seq., and (f) all other applicable Federal and State requirements.

69. If hazardous substances from the Site are to be shipped outside of Puerto Rico, Respondent shall provide prior notification of such Waste shipments in accordance with the EPA Memorandum entitled "Notification of Out-of-State Shipments of Superfund Site Wastes" (OSWER Directive 9330.2-07, September 14, 1989). At least five (5) working days prior to such Waste shipments, Respondent shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the Wastes are to be shipped; (b) the type and quantity of Waste to be shipped; (c) the expected schedule for the Waste shipments; (d) the method of transportation and name of transporter; and (e) the treatment and/or disposal method of the Waste streams.

XV. COMPLIANCE WITH OTHER LAWS

70. All actions required pursuant to this Settlement Agreement shall be performed in accordance with all applicable Federal and Commonwealth laws and regulations except as provided in CERCLA § 121(e)(1), 42 U.S.C. § 9621(e)(1), and 40 C.F.R. § 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under Federal environmental or Commonwealth environmental or facility siting laws. (See "Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

71. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work requires a Federal or State permit or approval, Respondent shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, nor shall it be construed to be, a permit issued pursuant to any Federal or State statute or regulation.

XVI. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

72. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, Respondent shall immediately notify the OSC at (787) 977-5820 and the National Response Center at (800) 424-8802. Respondent shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this paragraph are in addition to, not in lieu of, reporting under CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

73. In the event of any action or occurrence during Respondent's performance of the requirements of this Settlement Agreement which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding paragraph. Respondent shall take such action in accordance with applicable provisions of this Settlement Agreement including, but not limited to, the Site Health and Safety Plan. In the event that EPA determines that: (a) the activities performed pursuant to this Settlement Agreement; (b) significant changes in conditions at the Site; or (c) emergency circumstances occurring at the Site pose a threat to human health or the environment, EPA may direct Respondent to stop further implementation of any actions pursuant to this Settlement Agreement or to take other and further actions reasonably necessary to abate the threat.

74. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XVII. REIMBURSEMENT OF RESPONSE COSTS

75. Respondent hereby agrees to reimburse EPA for all Response Costs in connection with the Site. EPA will periodically send billings to Respondent for Response Costs. The billings will be accompanied by a printout of cost data in EPA's financial management system. Respondent shall remit payment to EPA via electronic funds transfer ("EFT") within thirty (30) days of receipt of each such billing.

76. To effect payment via EFT, Respondent shall instruct their bank to remit payment in the required amount via EFT using the following information, or such other updated EFT information that EPA may subsequently provide to Respondent:

- . Amount of payment
- . Bank: **Federal Reserve Bank of New York**
- . Account code for Federal Reserve Bank account receiving the payment: **68010727**
- . Federal Reserve Bank ABA Routing Number: **021030004**

- . SWIFT Address: FRNYUS33
33 Liberty Street
New York, NY 10045
- . Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency
- . Name of remitter:
- . Settlement Agreement Index number: CERCLA-02-2011-2010
- . Site/spill identifier: 02-ZS

At the time of payment, Respondent shall send notice that such payment has been made by email to acctsreceivable.cinwd@epa.gov, rice.richard@epa.gov and to:

U.S. Environmental Protection Agency
Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

and:

Geoffrey Garrison, On-Scene Coordinator
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region II
Centro Europa Building
1492 Ponce Deleon Avenue, Suite 417
San Juan, Puerto Rico 00907-4127

as well as to:

Argie Cirillo
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, New York 10007-1866

Such notice shall reference the date of the EFT, the payment amount, the name of the Site, the Settlement Agreement index number, and Respondent's name and address.

The total amount to be paid by Respondent pursuant to this paragraph shall be deposited into Puerto Rico Battery Recycling a/k/a Arecibo Battery CERCLA Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site,

or to be transferred by EPA to the EPA Hazardous Substance Superfund.

77. Respondent shall pay interest on any amounts overdue under Paragraph 76 above. Such interest shall begin to accrue on the first day that payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

XVIII. FORCE MAJEURE

78. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a force majeure. "Force majeure," for purposes of this Settlement Agreement, is defined as any event arising from causes beyond the control of Respondent and of any entity controlling, controlled by, or under common control with Respondent, including its contractors and subcontractors, that delays the timely performance of any obligation under this Settlement Agreement notwithstanding Respondent's best efforts to avoid the delay. The requirement that Respondent exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (a) as it is occurring; and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any Work to be performed under this Settlement Agreement or the financial difficulty of Respondent to perform such Work.

79. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a force majeure event, Respondent shall notify by telephone the EPA OSC or, in his absence, the Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA Region II at 732-321-6658 within forty-eight (48) hours of when Respondent knew or should have known that the event might cause a delay. In addition, Respondent shall notify EPA in writing within seven (7) calendar days after the date when Respondent first become aware or should have become aware of the circumstances which may delay or prevent performance.

Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondent's rationale for interpreting such circumstances as being beyond their control (should that be Respondent's claim); (b) the actions (including pertinent dates) that Respondent has taken and/or plans to take to minimize any delay; and (c) the date by which or the time period within which Respondent proposes to complete the delayed activities. Such notification shall not relieve Respondent of any of its obligations under this Settlement Agreement. Respondent's failure to timely and properly notify EPA as required by this paragraph shall constitute a waiver of Respondent's right to claim an event of force majeure. The burden of proving that an event constituting a force majeure has occurred shall rest with Respondent.

80. If EPA determines that a delay in performance of a requirement under this Settlement Agreement is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Settlement Agreement which are not directly affected by the force majeure. Respondent shall use best efforts to avoid or minimize any delay or prevention of performance of their obligations under this Settlement Agreement.

XIX. STIPULATED AND STATUTORY PENALTIES

81. If Respondent fails, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Settlement Agreement, and such failure is not excused under the terms of Paragraphs 78 through 80 above (Force Majeure), Respondent shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below:

- a. For all requirements of this Settlement Agreement, other than the timely provision of progress reports required by Paragraph 52, stipulated penalties shall accrue in the amount of \$750 per day, per violation, for the first seven days of noncompliance, \$1,250 per day, per violation, for the 8th through 15th day of noncompliance, \$2,500 per day, per violation, for the 16th through 25th

day of noncompliance, and \$5,000 per day, per violation, for the 26th day of noncompliance and beyond.

- b. For the progress reports required by Paragraph 52, stipulated penalties shall accrue in the amount of \$350 per day, per violation, for the first seven days of noncompliance, \$750 per day, per violation, for the 8th through 15th day of noncompliance, \$1,500 per day, per violation, for the 16th through 25th day of noncompliance, and \$3,000 per day, per violation, for the 26th day of noncompliance and beyond.

82. Any such penalty shall accrue as of the first day after the applicable deadline has passed and shall continue to accrue until the noncompliance is corrected or EPA notifies Respondent that it has determined that it will perform the tasks for which there is non-compliance. Such penalty shall be due and payable thirty (30) days following receipt of a written demand from EPA. Payment of any such penalty to EPA shall be made via EFT in accordance with the payment procedures in Paragraph 76 above. Respondent shall pay interest on any amounts overdue under this paragraph. Such interest shall begin to accrue on the first day that the respective payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

83. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Settlement Agreement. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Settlement Agreement.

84. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 97 of Section XXV (Reservation of Rights by EPA), Respondents shall be liable for a stipulated penalty in the amount of \$25,000.

85. Notwithstanding any other provision of this Settlement Agreement, failure of Respondent to comply with any provision of this Settlement Agreement may subject Respondent to civil penalties of up to thirty-seven thousand five hundred dollars

(\$37,500) per violation per day, as provided in Sections 109 and 122(1) of CERCLA, 42 U.S.C. §§ 9609 and 9622(1), and the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 74 Fed. Reg. 626 (January 7, 2009)), unless such failure to comply is excused by EPA under the terms of Paragraphs 78 through 80 above. Respondent may also be subject to punitive damages in an amount at least equal to but not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Settlement Agreement, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Settlement Agreement or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 and 122 of CERCLA, 42 U.S.C. §§ 9606 and 9622.

XX. OTHER CLAIMS

86. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent or Respondent's employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this Settlement Agreement. The United States or EPA shall not be held out as or deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

87. Except as expressly provided in Paragraph 100 (waiver against "de micromis" parties) and Section XXIV (Covenant Not to Sue by EPA), below, nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

88. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review,

except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXI. INDEMNIFICATION

89. Respondent agrees to indemnify, save, and hold harmless the United States, its agencies, departments, officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its employees, officers, directors, agents, servants, receivers, trustees, successors, assigns, or any other persons acting on behalf of Respondent or under its control, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Settlement Agreement by Respondent.

90. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including but not limited to, claims on account of construction delays.

91. Further, Respondent agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement.

XXII. INSURANCE

92. At least seven (7) days prior to commencing any Work at the Site, Respondent shall submit to EPA a certification that Respondent or its contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for

injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Settlement Agreement. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Settlement Agreement.

XXIII. FINANCIAL ASSURANCE

93. Respondent shall demonstrate the ability to complete the Work required by this Settlement Agreement and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within twenty (20) days of the effective date of this Settlement Agreement one of the following in the amount of \$75,000: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondent has sufficient assets available to perform the Work. Respondent shall demonstrate financial assurance in an amount no less than the estimated cost of the Work to be performed by Respondent under this Settlement Agreement. If EPA determines that the financial assurances submitted by Respondent pursuant to this paragraph are inadequate, Respondent shall, within fifteen (15) days after receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this paragraph.

XXIV. COVENANT NOT TO SUE BY EPA

94. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Response Costs. This covenant not to sue shall take effect upon the effective date of this Settlement Agreement and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but not limited to, payment of Response Costs pursuant to Section XVII (Reimbursement of Costs), above. This covenant not to sue extends only to Respondent and does not extend to any other person.

XXV. RESERVATION OF RIGHTS BY EPA

95. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

96. The covenant not to sue set forth in Section XXIV (Covenant Not to Sue by EPA), above, does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. Claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. Liability for costs not included within the definition of Response Costs;
- c. Liability for performance of response action other than the Work;
- d. Criminal liability;
- e. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. Liability arising from the past, present, or future disposal, release or threat of release of Waste outside of the Site; and
- g. Liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

97. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in the performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Costs incurred by the United States in performing the Work pursuant to this paragraph shall be considered Response Costs that Respondent shall pay pursuant to Section XVII (Reimbursement of Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXVI. COVENANT NOT TO SUE BY RESPONDENT

98. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Response Costs, or this Settlement Agreement, including, but not limited to:

a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. Any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. Any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 100 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 96 (b), (c), and (e)-(g), but only to the extent that Respondent's claims arise from

the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

99. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

100. Waiver of Claims. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

101. The waiver in Paragraph 100 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. That such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. That the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

XXVII. CONTRIBUTION PROTECTION AND RIGHTS

102. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Response Costs.

103. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has resolved its liability to the United States for the Work performed under this Settlement Agreement and for Response Costs.

104. Except as provided in Section XXVI (Covenant Not to Sue by Respondent), above, nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action or demands against any persons not parties to this Settlement Agreement for indemnification, contribution or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that provide contribution protection to such persons.

XXVIII. MODIFICATIONS

105. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

106. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed

with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 105.

107. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXIX. TERMINATION AND SATISFACTION

108. Upon a determination by EPA (following its receipt of the Final Report referred to in Paragraph 56, above) that the Work required pursuant to this Settlement Agreement has been fully carried out in accordance with this Settlement Agreement, EPA will so notify Respondent in writing. Such notification shall not affect any continuing obligations of Respondent. If EPA determines that any removal activities have not been completed in accordance with this Settlement Agreement, EPA may so notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies.

XXX. SEVERABILITY/INTEGRATION/APPENDICES

109. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondent need not comply with one or more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or excused by the court's order.

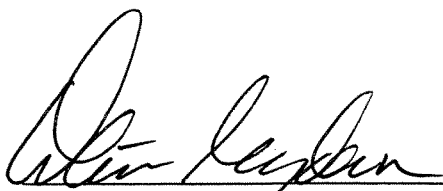
110. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix A - Map of Site

XXXI. EFFECTIVE DATE

111. This Settlement Agreement shall become effective five (5) days after execution of the Settlement Agreement by EPA. All times for performance of actions or activities required herein will be calculated from said effective date.

U.S. ENVIRONMENTAL PROTECTION AGENCY



Walter Mugdan
Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region II

June 7, 2011

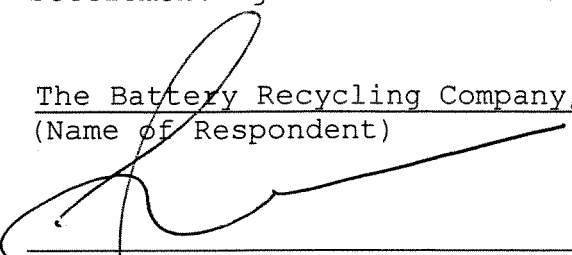
Date of Issuance

In the Matter of Puerto Rico Battery Recycling a/k/a Arecibo
Battery CERCLA Site, EPA Index No. CERCLA-02-2011-2010

CONSENT

The Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Settlement Agreement. The Respondent hereby consents to the issuance of this Settlement Agreement and to its terms. Furthermore, the individual signing this Settlement Agreement on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Settlement Agreement and to bind Respondent.

The Battery Recycling Company, Inc.
(Name of Respondent)


(Signature)

6/3/2011
(Date)

Luis Figueroa
(Printed Name of Signatory)

President
(Title of Signatory)



APPENDIX A

Map of
Puerto Rico Battery Recycling a/k/a Arecibo Battery CERCLA Site

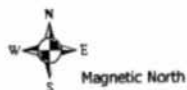




Map created using orthoimagery data from USGS, site sample location data.

Map Creation Date: 26 July 2010

Coordinate system: Puerto Rico State Plane
 FIPS: FIPS 5200
 Datum: NAD83
 Units: Feet



200 0 200
 Feet

Legend

- Sample Location
 Sampled by July, 2010

Url: g:\ArcInfoProjects\SERAS01\SER00100_Arecibo_Battery_Recycling
 MXD file: g:\Arcviewprojects\SERAS01\00-100\100_Sample_Location_July2010_f1rev001
 Revision Number: 001

U.S EPA Environmental Response Team
 Scientific Engineering Response and Analytical Services
 EP-W-09-031
 W.A.# 0-100

Figure 1
 Sample Locations Map
 Arecibo Battery Recycling
 Arecibo, Puerto Rico

